

The U.S. Department of Homeland Security (DHS) recently sent out Form I-9 completion guidance due to COVID-19. E-Verify is implementing the following temporary policies to minimize the burden on both employers and employees during this time:

- Employers are still required to create cases for their new hires within three business days from the date of hire.
- Employers must use the hire date from the employee's Form I-9 when creating the E-Verify case. If case creation is delayed due to COVID-19 precautions, select "Other" from the drop-down list and enter "COVID-19" as the specific reason.
- Employers may **not** take any adverse action against an employee because the E-Verify case is in an **interim case status**, including while the employee's case is in an extended interim case status.

Employers with employees taking physical proximity precautions due to COVID-19 will not be required to review the employee's identity and employment authorization documents in the employee's physical presence. DHS defers the physical presence requirements associated with Employment Eligibility Verification (Form I-9) under Section 274A of the Immigration and Nationality Act (INA).

However, employers must inspect the Section 2 documents remotely (e.g., over video link, fax or email, etc.) and obtain, inspect, and retain **copies** of the documents, within three business days for purposes of completing Section 2. Employers also should enter "COVID-19" as the reason for the physical inspection delay in the Section 2 Additional Information field **once physical inspection takes place after normal operations resume**. Once the documents have been physically inspected, the employer should add "documents physically examined" with the date of inspection to the Section 2 additional information field on the Form I-9, or to Section 3 as appropriate. These provisions may be implemented by employers for a period of 60 days from March 20, 2020, OR within three business days after the termination of the National Emergency, whichever comes first.

Keep in mind that this provision only applies to those working remotely. Employers who avail themselves of this option must provide written documentation of their remote onboarding and telework policy for each employee. This burden rests solely with the employers.

If employees are physically present, no exceptions are allowed for in-person verification of identity and Form I-9 completion.

Additionally, employers may **designate an authorized representative** to act on their behalf to complete Section 2. An authorized representative can be any person the employer designates to complete and sign Form I-9 on their behalf. The employer is liable for any violations in connection with the form or the verification process, including any violations of the employer sanctions laws committed by the person designated to act on the employer's behalf.

Once normal operations resume, all employees who were onboarded using remote verification, must report to their employer within **three business days** for in-person verification of identity and employment eligibility documentation for Form I-9. Once the documents have been physically inspected, the employer should add “**documents physically examined**” with the date of inspection to the Section 2 additional information field on the Form I-9, or to Section 3 as appropriate. Any audit of subsequent Form I-9 would use the “in-person completed date” as a starting point for these employees only.

As of March 21, 2020, E-Verify is also extending timeframes for taking action to resolve **Tentative Nonconfirmations (TNCs)** due to Social Security Administration (SSA) office closures to the public, as well as the timeframe to take action to resolve DHS TNCs in limited circumstances when an employee cannot resolve a TNC due to public or private office closures.

**IMPORTANT:** Agencies must notify employees about their TNC result as soon as possible. After employees are notified of their TNC and decide whether to take action to resolve the TNC, the employee should acknowledge the decision on the Further Action Notice, and the employer should notify E-Verify of their employee’s decision. Employees who choose to take action to resolve a TNC are referred to SSA and/or DHS. Employers **may not** take any adverse action against an employee because the E-Verify case is in an interim case status, including while the employee’s case is in an extended interim case status.

**For more information, please visit:**

<https://www.ice.gov/news/releases/dhs-announces-flexibility-requirements-related-form-i-9-compliance>  
for this recent announcement

<https://www.e-verify.gov/about-e-verify/whats-new>